

CTI Alaska, Inc. and Gene Smith. Case 19-CA-24315¹

September 25, 1998

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND BRAME

On January 28, 1997, Administrative Law Judge James M. Kennedy issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,² and conclusions³ and to adopt the recommended Order.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

George I. Hamano, Esq., for the General Counsel.

William F. Mede, Esq. and *Patrick J. McCabe, Esq.* (*Owens & Turner*), of Anchorage, Alaska, for the Respondent.

DECISION**STATEMENT OF THE CASE**

JAMES M. KENNEDY, Administrative Law Judge. This case was tried in Anchorage, Alaska, over 6 days between July 30 and September 25, 1996. The charge was filed January 23,

¹ This case was originally consolidated with Cases 19-CA-24174, 19-CA-24251, and 19-CA-24342. On September 24, 1996, those cases, involving other individual charging parties, were settled by non-Board agreement, the unfair labor practice charges were withdrawn with the judge's approval, and the corresponding complaints were dismissed on the record.

² We correct two factual errors in the judge's decision. In par. 17 of the section of his decision entitled "Gene Smith's Duties and Authority," the judge stated that Smith's counterpart, Bob Landers, disagreed with Smith regarding the layoff of employee Bob Clancy, that Landers said that he believed Clancy had not been properly trained, and that as a result Clancy was not selected for layoff. The record shows, however, that Clancy's name was on the layoff list at the end of the meeting, but that Clancy himself later appealed to Operations Manager Mike Thorne and the latter requested Field Supervisor Ray Fleming to re-evaluate Clancy. In par. 2 of his conclusions, the judge stated that Operations Manager Laura Barletta honored Smith's demand not to transfer Davis to his group; we note that it was Operations Manager Mike Thorne, rather than Barletta, who solicited Gene Smith's views on bringing Davis to the BP project and honored Smith's request not to do so. These errors do not affect the result in this case.

³ In affirming the judge's conclusion that Foreman Gene Smith was a statutory supervisor at the time he was discharged, we rely on the judge's finding that Smith had the authority to effectively recommend personnel actions, and we do not pass on the rest of the judge's rationale. Specifically, the record establishes, the judge found, and we agree that Smith effectively recommended the layoff of employee Duane Davis and the transfer of employee J. B. Cowell. We also observe that the absence of additional examples of Smith's exercise of supervisory authority may well be explained by the fact that he held the foreman's position for only 10-1/2 months.

1996, by Gene Smith (Smith), an individual, and the Regional Director for Region 19 issued the complaint on April 18, 1996. The case was originally consolidated with Cases 19-CA-24174, 19-CA-24251, and 19-CA-24342. However, on September 24, 1996, those cases, involving other individual charging parties, were settled by non-Board agreement. The unfair labor practice charges were withdrawn with my approval and the corresponding complaints dismissed on the record. The original caption has been amended to reflect those dismissals. As the matter currently stands, the complaint asserts that CTI Alaska (Respondent) violated Section 8(a)(3) of the National Labor Relations Act (the Act) on November 16, 1995,¹ when it discharged Smith.

Issue

The parties entered into a stipulation at the hearing that if I (or the Board) conclude that Smith is a supervisor within the meaning of the Section 2(11) of the Act that Respondent did not violate Section 8(a)(3), but that if I (or the Board) find that he is an employee within the meaning of Section 2(3) of the Act, the discharge did violate Section 8(a)(3) and an appropriate remedy may be issued. Accordingly, the only issue which needs to be decided is whether Smith was a 2(11) supervisor at the time he was discharged.

FINDINGS OF FACT**I. JURISDICTION**

Respondent, an Alaska corporation, is headquartered in Anchorage. It is in the business of conducting nondestruct testing on pipes and vessels in the oil exploration and transmission industry. Its customers are oil exploration firms and crude oil pipeline operators. It admits that it meets the Board's nonretail standard for the assertion of jurisdiction and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES**A. Background**

Most of Respondent's operations are conducted on the North Slope of Alaska in the Prudhoe Bay area and environs, although it does perform work elsewhere in Alaska, including the Cook Inlet/Kenai area southwest of Anchorage. Smith's difficulties arose at the Prudhoe Bay operation. During 1995 and for several years before, Respondent, at Prudhoe Bay, was performing nondestruct testing for British Petroleum Exploration, Alaska (BP). That firm, for our purposes, may be termed the "owner" of the property on which much of the oil producing activity occurs. Throughout its oil field, BP has built a network of buildings and support facilities located at appropriate locations near the wells and drill sites. It has hired numerous subcontractors to do many of the functions which such an operation requires. These subcontractors range from drilling companies to construction companies to catering businesses to testing firms such as Respondent.

In the course of its business, Respondent is obligated on a nearly year-round basis to send testing crews to locations designated by BP to perform various nondestruct tests on piping and other equipment to determine whether the item being tested needs replacement or repair. There are three principal testing

¹ All dates are 1995 unless otherwise indicated.

methods which Respondent uses. These are X-ray (RT), ultrasonic (UT), and video X-ray, also known as real time radiography (RTR). The last of these techniques is not particularly germane to our inquiry. Smith was directly involved with crews assigned to perform RT and UT work. The RTR work was done on a summer-only basis by specialized crews, though such crews remained on the North Slope into October 1995. Smith does not appear to have been involved with them.

The hierarchy in which Smith worked is as follows: Respondent's headquarters are located in Anchorage. Its president, George Haugen, and its vice president in charge of operations, Bill Webb, both work there, as do its human relations department personnel. The North Slope operations managers assigned to the Prudhoe area were Mike Thorne and Laura Barletta. These individuals, like nearly everyone who works at Prudhoe, work as "alternates" or "counterparts." In general, due to the remote nature of the oil field, individuals are stationed at the site for set periods, usually 2 weeks there and 2 weeks out. "Alternates" serve interchangeably with one another. Both Thorne and Barletta operated in that fashion. Similarly, so did their immediate subordinates, the field supervisors. During 1995 the counterparts holding that position were Ray Fleming and Ernie Bishop. Last in the line of putative managers were the two assistant field supervisors, Bob Landers and Smith. All of these individuals, when on duty, worked and lived at the Prudhoe facility, as did the technicians who performed the actual testing work. Landers and Smith were assigned a personal vehicle and they lived in unshared quarters in the work area known as the "Santa Fe" pad. They also attended the nightly management meetings held at 5 p.m.

RT work involves taking X-ray equipment to a designated location, identifying the proper pipe, weld, fitting, or other object, and then setting up the X-ray shot and shooting the photographs. The UT work was similar: After locating the object to be tested, the technician was obligated to slide the equipment across the object to create an image which could be read by BP's experts.

A common preliminary to the testing was to expose the object so the technicians could perform the test. Because the material to be tested was usually hidden by insulation or was otherwise inaccessible, Respondent's management was required to notify either BP or one of the construction contractors to perform the necessary removal work. Since 1992, to arrange for that type of preliminary work, it became the assistant field supervisor's task to create "job orders." Such work was usually carried out by a contractor in close conjunction with BP and Respondent. Accordingly, it was important to closely coordinate the scheduling of the work. Job orders are to be distinguished from "packages," the daily instructions for each technician. The "packages" were created by Respondent's layout people pursuant to general requests made by BP's plant inspectors. Each package contained instructions to the crew regarding the location of the item to be shot, its identification number, the type of test, and other pertinent information.

The packages were usually delivered to the appropriate crew at the beginning of the shift, most often by the field supervisor, but sometimes by the assistant field supervisor (foreman by the witnesses). In addition, there were shots which had to be redone. These were usually given to the same crew, but if the crew had moved to a new location, redo's were assigned to a followup man or crew. Many, if not most, of the shots were of the "frequent" variety, meaning that they would be done on a

scheduled basis, so histories could be developed for the tested item. However, in addition, there were special projects which could not be scheduled long in advance. These appeared on short notice, often with a high priority or urgency.

When the field supervisors made the assignments, they had to take into account a number of things: first, the type of test the package required; second, the level of skill, experience, or appropriate certifications held by the technicians to assure the job would be performed acceptably. In addition, such factors as overtime and workload, including travel time, were considered. During the 1995 "season" Respondent employed a technician staff of about 20 per shift or, as there were two shifts each day, 40 per tour. Since there were two tours, its total staff consisted about 80 techs. They were divided into crews of two. Thus, on any given day, as many as 20 assignments needed to be made. Of course, once made, the supervisory staff needed to perform ordinary oversight to assure that assignments were effectively and timely carried out. Moreover, the entire supervisory staff had administrative duties to attend to, including matters which BP imposed on it. Supervision of this staff was, and is, a big job.

This situation has been extant for several years. In 1992 Respondent, seeking to alleviate the burden placed on the field supervisor and the North Slope operations manager, as well as attempting to satisfy some ancillary demands by BP, created the position of assistant field supervisor. The first two persons to hold the job were Fleming and Landers. Both of these individuals were very knowledgeable in the field, were experienced, and apparently held the highest certifications. In March 1995, due to turnover, Fleming became one of the field supervisors and Gene Smith was selected as the replacement assistant supervisor. Landers remained the other.

B. Gene Smith's Duties and Authority

At the outset, I note that there are some sharp credibility concerns regarding what Smith contends his authority was during 1995 and what upper management, specifically Webb, says it told him his authority was. It is not entirely necessary to resolve this discrepancy, although it is appropriate to note that Smith gave an affidavit before he was discharged which suggests he knew he was a statutory supervisor, but which he now wishes to disavow. The affidavit is somewhat ambiguous but contains language which requires explanation. Smith did not explain it well and I am not confident of his probity. On the other side, Webb claims to have had at least two distinct conversations with Smith describing his duties with specific instructions regarding his authority and duty to counsel and to document employee shortcomings. Since none of the three or four proposed written job descriptions which were drafted (but never finalized) includes any of the statutory indices for 2(11) supervisor, and because Smith emphatically denies the conversations occurred, I am disinclined to accept Webb's testimony as well. Instead, I look to what actually happened.

In reviewing the following evidence, one should keep in mind that the indices of supervisory authority set forth in Section 2(11) are to be read in the disjunctive. *NLRB v. St. Francis Hospital of Lynwood*, 601 F.2d 404, 421 (9th Cir. 1979). That is, in order to be a supervisor within the meaning of the statute an individual need only possess one of the listed powers described there. The statute is quoted in the footnote.²

² Sec. 2(11) reads as follows:

When Smith was promoted from senior technician to assistant field supervisor, he remained an hourly employee. His pay rate increased from \$19.20 to \$22.50. He testified, oddly, that his hourly rate only increased by one dollar. Nevertheless, he was hourly while the field supervisor was paid on a basis more approximating a salary—a day rate. Despite the wage differential between himself and the techs, Smith asserted that he was a craft hand rather than “in the management supervisory loop for CTI.” Indeed, at first he testified that he did not review the work of the field crews. Yet, in an investigative affidavit he said he did perform such reviews. When confronted with the affidavit, he recanted his earlier denial of that responsibility.

I think it is fair to conclude that many of Smith’s duties did not involve direct oversight of the crews. For example he spent a great deal of time developing X-rays and entering information on the computer. The latter could be characterized as “plant clerical” duties especially if concentrating on only the clerical aspect. Yet, one of his tasks was to post the “cost tracker” material generated by each crew. In doing that, Smith necessarily familiarized himself with the production of each crew. Similarly, once he completed the development of all the X-rays for the day, he knew exactly how many X-rays each crew had shot. Furthermore, a simple view of each X-ray allowed him to make early determinations regarding whether it could be read. If not, he was able to notify the appropriate crew to take another shot. Alternatively, he could assign the re-shoot to the followup crew.

Of course, the fact that these tasks required him to work in the office meant that his field time and actual hands-on oversight was reduced. Still, it is undisputed that beginning in the afternoon of his 12-hour shift Smith was able to go into the field and observe the crews in action. He often supported the crews by offering his expertise and technical assistance with respect to RT matters. He was highly skilled in that discipline. He says he was less confident of his capability in resolving UT problems. Still, he visited UT crews in the same fashion he visited the RT crews. He gave each further support by providing them with equipment he had repaired or recalibrated and by assisting them with transportation. Contrary to his early testimony, it is clear that Smith spent sufficient time in the field to become familiar with each crew’s performance.

Insofar as direct hands-on authority to direct tasks or correct behavior, Smith generally denies he had been told he had such authority. He concedes, however (confirmed by employee Hanson), that he once spoke to employee Christensen about his attitude toward his work. Hanson goes further and says he overheard Smith loudly chewing Christensen out over some transgression. Similarly, employee Hazlett testified that on five occasions he overheard Smith remonstrating to his night shift subordinates about various conduct, including employee Clancy. Supervisor Fleming testified that he recalled Smith counseling employee Sneed to use some common sense about another transgression. He also testified that Smith at least once switched crew members around to avoid some interpersonal problems which had arisen.

The term “supervisor” means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Christensen testified that on one occasion he had failed to protect a trainee from exposure to radioactivity during an X-ray shot. As a result, he had to deal with Smith regarding what sort of discipline would be imposed. According to Christensen, Smith told him that he had managed to keep him from being fired. See Christensen’s testimony in the footnote.³ Aside from the actual discussion which Christensen describes, the italicized portion of Christensen’s testimony constitutes Smith’s direct admission that he was involved in the decision-making process regarding firing employees.⁴

The manner in which the field supervisors make work assignments has been discussed in the background section, above.

³ Christensen’s testimony is as follows:

Q. (By MR. MCCABE) Okay. And then what did Ray—what did Gene tell you?

A. That he—let’s see, I lost my train of thought now.

Q. Okay. You had the radiation incident and Ray was determining what kind of discipline to do.

A. Right. Right. Discipline.

Q. And Gene came and talked to you. What did Gene say?

A. And he rec—and that he said that he’d went to Ray and recommended maybe some time off or reduction in grade.

Q. Did Gene tell you that Ray had some other plans?

A. No, but it was—it was pretty evident that the—whatever

.....

A. [T]he penalty was . . . it was going to be pretty severe.

.....

Q. Did Gene tell you he made any recommendations to Ray regarding whether or not you should be fired?

A. He did. *He did tell me that he was—that he—that he was part of the decision process of whether I should be fired or whether—or whatever should happen—happen to me.*

Q. Did he tell you whether he argued one way or the other?

A. Yes, he did. He told me that he recommended that it was just time off and reduction in grade.

Q. Did he tell you whether anyone disagreed and wanted to fire you?

A. No.

Q. Okay. Did — were you fired as a result of the incident?

A. No.

Q. Were you disciplined at all?

A. Yes, I was.

Q. What type of discipline did you get?

A. I—the end result was I received a eight-hour—could not do any x-ray work until I had eight hours of radiation safety refresher training, which I took. I have a letter of reprimand in my—in my permanent file at CTI’s office

Q. Was that consistent with the conversation you had with Gene and what Gene said he recommended?

A. As I recall the conversation with Gene was more or less not to—not—not for termination. Not specifically what form of punishment I would receive. (Emphasis added.)

⁴ Smith appears to have made a second admission to Barletta shortly after the initial unfair labor practice charges were filed.

Q. (BY MR. MEDE) I guess what I’m driving at, Mr. Smith, is whether you made any statement to Ms. Barletta that you felt that your position as assistant field supervisor somehow placed limitations on your union—your ability to conduct union matters?

A. Yes. I imagine I said that to her.

Q. And that’s because of the duties that you performed for CTI, wasn’t it?

A. No.

I think Smith’s testimony here may fairly be regarded as such an admission, but note that it seems to creep into the area calling upon him to draw a legal conclusion and Smith wants to place the remark in some other context. For that reason, I do not accept it as conclusive, but only as part of the record as a whole.

There is really no dispute that those assignments involve the exercise of independent judgment. That task, not infrequently fell to the assistant field supervisors as well. Indeed, the assistant supervisor was a readily available resource who could be called upon as a fill-in manager. Employee testimony supports Respondent's contention in this regard.

Former employee Jeff Smith (who is not related to Gene Smith), one of the Charging Parties who reached a non-Board settlement, agrees that when the field supervisors were not present, the foreman, often Gene Smith, usually acted in their place. However, he and others also observed that sometimes others were selected to act for the supervisors. They were called on much less frequently. Those individuals were film interpreters and/or layout employees. Jeff Smith says he is aware of at least a dozen occasions where the foreman made assignments in the absence of the field supervisor. Moreover, Foreman Landers even substituted for BP's plant inspectors in their absence. Smith was not asked to substitute for BP's inspectors due to his lesser experience.

In addition to the foreman's authority as a substitute supervisor to make work assignments, employee Vigman testified that the foreman (not specifying whether it was Smith or Landers) directed him to take additional shifts. Presumably that required the invocation of overtime pay. Both Vigman and Jeff Smith confirmed that the foreman gave general oversight to the techs. Other witnesses downplayed the foreman's daily oversight. See the testimony of trainee Kosto and employee Brennan. (Brennan is Smith's personal friend and off-Slope roommate.) Brennan agrees, however, that he often dealt with the foreman when the field supervisors were unavailable.

There is a great deal of evidence relating to Smith's authority insofar as personnel matters are concerned. Smith, for his part, tends to soft peddle his authority and activity. For example, he contends at one point that he did not participate in employee evaluations and did not offer input respecting an employee's workmanship, allowing that he did report the morale and attitudes of individuals. At another point he conceded that he did offer input on work performance for evaluation purposes, but only when asked to do so by his superiors.

Fleming testified that on at least one occasion Smith recommended that an employee, Lang, be promoted. Smith would only concede that he "may have told" Fleming that Lang should be promoted." Lang's promotion soon followed that conversation. There is some disagreement regarding the effectiveness of Smith's recommendation. Lang was overdue for consideration and appears to have been qualified for it for some time. Whether the promotion was due to Smith's comment and whether that comment can be taken as a recommendation is not entirely clear. Certainly it was appropriate for him to call the omission to the attention of the decision makers.

Smith was also involved with two other individuals, making comments which resulted in personnel changes for them. According to Thorne, at one point Smith became so upset with the bad X rays taken by employee Cowell that he asked that Cowell be removed from the job. The proposal eventually came to Thorne who decided to move Cowell to Kuparuk, a nearby site operated under another business contract where he would be under different supervision. Smith denies commenting on Cowell's shots.

In August, the North Slope operations managers had to make a decision regarding some personnel at Milne Point. That was another business contract at a location not too far from the

Santa Fe pad offices, but was somewhat independent. Apparently based on some organizational concerns Respondent concluded that it was best to consolidate those employees with the Santa Fe group. One of the senior techs at Milne Point was Duane Davis. Thorne asked Smith for his opinion regarding the absorption of the personnel from that location. Smith, according to Thorne, told him that he had no objection to any of the Milne Point crew as long as Thorne didn't bring Davis over. Thorne describes Smith's objection to Davis as being made in the strongest of terms. As a result, Thorne decided not to transfer Davis. Instead, he laid Davis off. Smith does not controvert Thorne's testimony here. Indeed, he agrees that he and Davis have been long-time antagonists.

In mid-September, apparently due to the oncome of winter and at the behest of BP, Respondent determined it was necessary to reduce the size of its staff. Barletta instructed Bishop to prepare a list of five or six employees to be let go. Bishop prepared a preliminary list and gave it to his counterpart, Fleming, who added another name. Fleming gave the expanded list to Barletta. A few days later they met with the BP managers. A debate ensued regarding BP's desire to keep the RTR crews (who were not regarded as permanent employees) longer and Respondent's desire to lay them off before regular employees such as the RT and UT crews. BP's preference prevailed. Consequently, on September 22 Barletta met with Fleming and the two assistant supervisors, Landers and Smith, to discuss the list which had been prepared. In addition to the six or seven persons who Fleming/Bishop thought should be the primary selections, an additional seven names were set forth as backup choices in the event they decided to keep any of the first six.

Some of what occurred at the meeting is in dispute. Smith agrees, however, that his superiors solicited information from him and Landers regarding the persons on the list. He agrees that the merits and shortcomings of the persons on the list were discussed in detail. Contrary to others' testimony, he asserts that during the meeting he made several objections which were overruled or ignored. He says he opposed Barletta's classifying individuals as ineligible for recall because it was disciplinary in nature and the Company's own personnel manual required progressive discipline steps which were not being followed. Furthermore, he says he opposed the layoff of Cowell and Clancy, even though he thought Clancy was not a person he wanted on the job.

Barletta's testimony is different. She says that Smith was "adamant" about Clancy: he wanted Clancy "gone." (Employee Cowell reports Smith as having told him the following day that he had put Clancy's name in for layoff, thereby corroborating Barletta.) Fleming also remembers Smith wanted Clancy on the list because he was "whiney." Even so, Landers disagreed with his counterpart, Smith, regarding Clancy, saying he believed Clancy had not been properly trained and that his shortcomings could be traced to a lack of instruction. As a result of that discussion, Clancy was not selected for layoff.

Barletta also says Smith told the group that he "didn't trust" Jeff Smith's UT readings. Her report of Smith's assessments of Jeff Smith and Clancy find corroboration elsewhere in the record. One such corroboration is Fleming's testimony that Landers agreed with Gene Smith that Jeff Smith warranted being on the list because of his poor UT readings. Another is unchallenged evidence that Jeff Smith had received warnings about his faulty readings and Clancy had been a poor producer.

Fleming recalled at the meeting Smith wanted Christensen's name to be on the list saying he "deserved" to be on it. He says Landers disagreed with Smith regarding Christensen. Christensen was not laid off.

Cowell had returned from Kuparuk in July, but remained in low esteem. When the list was put together in September, his name was included. Barletta had determined that he should be rated as not eligible for rehire. Nonetheless, after he had been notified of his pending layoff, he was able to negotiate a short extension with Thorne. He also got Thorne to agree that he could return to the Slope sometime in the future, but at a reduced pay grade. Cowell used the additional time to contact some supervisors in Kenai and wangled an intracompany transfer there. He was still working in Kenai as of the instant hearing.

Above, I referenced Smith's testimony that he opposed Cowell's layoff during the September 22 meeting. If so, it seems likely his opposition convinced Thorne later to relent on Barletta's earlier decision to label Cowell as ineligible for recall, converting that decision to a possible rehire at a reduced pay grade. Smith's stance no doubt also allowed Cowell to arrange for the transfer to Kenai, for if the ineligibility rating had stood, the transfer could not have occurred. Smith's argument that his recommendations carried no weight at the meeting is therefore not supported by the evidence.

IV. CONCLUSIONS

Based on the factual recitations set forth above, only one conclusion can rationally be drawn: Contrary to the General Counsel's contention, Smith, in holding the job of assistant field supervisor (foreman) was, throughout his tenure in that job, a supervisor within the meaning of Section 2(11) of the Act.

Smith quite clearly had the authority to effectively recommend personnel changes for techs ranging from discipline levels, to crew and staff membership, to layoff selections. These recommendations occurred in a hierarchical context, were subject to fairly intense scrutiny by higher management, and were subject to modification. Yet, frequently his recommendations were accepted as warranting some sort of action. Barletta honored his demand not to transfer Davis to his group and he was instrumental in causing Cowell to be removed to Kuparuk.

He told at least one employee, Christensen, that he was involved in firing decisions, lobbying against his discharge over the radiation incident, and he clearly participated in the September 22 discussion which resulted in the final layoff decisions which were under discussion. His remarks were taken into consideration and were generally followed except where his counterpart disagreed with his assessment. Even then, since his counterpart, Landers, held the same job, it cannot be said that Landers's views lack relevance here. If anything, since Landers was more senior in the job, his recommendations may

have carried a bit more weight than Smith's. To the extent their recommendations differed, Landers seems to have prevailed. Yet that only meant higher management looked to the views of both incumbents and selected the views of the more experienced. It still, nonetheless, accepted the recommendation of a person holding the same job as Smith. Thus, effective recommendations came from the assistant field supervisor regarding decisions on which employees should be brought aboard, which should be kept, and which should not.

That power alone resolves the question of whether Smith was a Section 2(11) supervisor. Clearly he was. He possessed other statutory powers as well, his ability to effectively recommend discipline and his power to assign work, not only as a substitute, but also on his own. Yet, he possessed secondary supervisory features as well. He had his own truck, lived in private quarters, had a (shared) office, and was paid about 17 percent more than the senior techs. He reviewed the techs' work, both in the office via production and performance reports and photos, and directly in the field; he daily "ramrodded" the work and he attended the daily 5 p.m. management meetings. These duties and tasks set him well above the rank-and-file technicians. There is no doubt that the incumbent holding the job of assistant field supervisor, as Smith did, is a statutory supervisor.

Accordingly, consistent with the stipulation of the parties, having found Smith to be a statutory supervisor, the complaint must be dismissed. *Parker-Robb Chevrolet*, 262 NLRB 402 (1982).

On these facts and analysis, I make the following

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce and in an industry affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. During the 1995 work season, Charging Party Gene Smith was a supervisor within the meaning of Section 2(11) of the Act and not subject to the protections of Section 7 and Section 8 of the Act.

3. Respondent has not committed the unfair labor practices of which it is accused in the complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁵

ORDER

The complaint is dismissed in its entirety.

⁵ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.